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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,577	11/13/2000	John Calce	VIZR.10001NP	7169

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EXAMINER

TRAN, HAI

ART UNIT	PAPER NUMBER
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3693

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/711,577

Applicant(s)

CALCE ET AL.

Examiner

Hai Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/26/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 26 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20, 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

1. The examiner for this application has changed. Please indicate Examiner Hai Tran as the examiner of record in all future correspondences.
2. This is the Final Office Action in response to Applicant's Response to Election/Restriction Requirement, filed on December 26, 2006. Applicant has elected Group I claims 1-10, 11-20 and 26 for prosecution. Claims 21-25 have been cancelled. Claims 1-20 and 26 are pending in this application.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 11 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. More specifically, the calculating settlement amounts per Applicant's specification are not always to employees. Page 7, lines 22-25 and page 9, lines 13-19 of the specification point out that payment to employees only if mostly credit/debit card sales.

Response to Arguments

6. Applicant's arguments with respect to claims 1-20 and 26 filed on 06/09/2006 have been considered but they are not persuasive.

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7. Applicant asserts that the examiner's citations fail to illustrate that Gilbert teaches calculation of settlement amounts *without accounting for any investment withholding*.

The Examiner respectfully disagrees. Examiner begins by noting that the rejection to the claims is on the prior art as a whole and not just the cited portions. As such Examiner points to Gilbert column 7, lines 45-47 (the percent vested is automatically computed by the invention based on the vesting vehicle for the related employer); column 8, lines 42-45 (the keypad entry feature of the monthly contribution grid allows the operator to enter employee contributions using only the numeric keypad. Each ... number), 56-59 (distribute the aggregate monthly contribution amongst each employee's investment choices based ... amounts); and column 10, lines 27-33 (table containing information for the total investment made by each employee ... above), 55-67 (block refers to the "Monthly Contributions" screen, the data ... employee 1 may make a monthly contribution of \$400.00 to his 401k plan ... table) as an example of calculation of settlement amounts.

8. Applicant is reminded that claims are given the broadest reasonable interpretation, and this has been stated in page 5 of the 02/09/2006 Office Action and is quoted here again for refreshment "claims may be given the broadest reasonable interpretation. See In re Hyatt, 211 F.3d 1367, 1372 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). To that extent, the examiner would point out that the cited passages of Gilbert disclose employee contributions and allocation percentages and amounts. The examiner interprets settlement amounts to include these ideas, that is, how much of earnings should be forwarded toward retirement, and in what investment vehicles. The

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Applicant appears to treat the term settlement amount to be the totaled purchase amount applied to a credit card user after including a gratuity. Even under this interpretation, the examiner would point out that a combination of the references would teach the method and system as claimed. Gilbert teaches a system and method for considering contribution and allocation of income to 401k's, while Meyer discloses a system and method that is capable of tracking gratuities and the distribution thereof. The examiner is satisfied that a combination of references discloses Applicant's invention as claimed."

9. Examiner notes that Gilbert teaches calculating an investment amount based on salary, wages, bonus, overtime pay, etc. (column 15, lines 25-54). Meyer teaches a portable transaction device for keeping track of gratuity, this is used to calculate settlement amount at the end of each shift. It is the position of the Examiner that one of ordinary skill in the art at the time of the present invention could have reasonably concluded, based on the teachings of Gilbert and Meyer, to include investment withholding as taught by Gilbert into settlement process of Meyer's.

10. With respect to the argument of claim 26, the Examiner maintains with the position provided in the 02/09/2006 Office Action in that keeping a record of earned commissions by sales personnel is old and well known in the art.

11. It is the determination of the Examiner that the rejections with respect to claims 1-20 and 26 in the 02/09/2006 Office Action are valid and applicable, and hence the rejections remain stayed.

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12. Applicant's arguments with respect to claims 21-25 are dismissed as a result of cancellation of said claims.

13. Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1-9, 11-19 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert (U.S. Patent No. 6,041,313) in view of Meyer (U.S. Patent No. 5,933,812) and further in view of Official Notice. Claims 10 and 20 are rejected as being unpatentable over Gilbert in view of Meyer and further in view of Henderson.

16. **With regard to Claims 1,11** Gilbert teaches a system and method comprising:

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calculating settlement amounts for employees according to predefined preferences for withholding investment; and (Col. 5, lines 8-16; Col. 7, lines 50-57),

generating an investment database of investment amounts associated with the employees; (Col. 9, lines 16-18; Col. 7, lines 50-57),

receiving said investment database; and
(Col. 9, lines 16-18; Col. 7, lines 50-57),

coordinating investment of said investment amounts with one or more investment providers. (Figure 6, Process 9; Col. 10, lines 55-60).

17. Gilbert does not expressly teach a system and method that calculates or maintains gratuity income totals. However, there are numerous system and devices that are designed to capture this type of information as they relate to bar and restaurant employees. Meyer, at (Col. 3, lines 50-65) and in detail at (Col. 7, line 37 - Col. 9, line 47) describes one apparatus that allows a restaurant server to electronically maintain earned gratuities.

18. Thus Meyer teaches:

employer management circuitry for receiving information regarding sales and credit/debit gratuities for each participating employee of an employer.

19. It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made, to combine the teachings of Gilbert, relating to a system and method for managing employee retirement plans, with the teachings of Meyer, relating to receiving gratuity information. The motivation for such a combination is described in Gilbert at (Col. 2, lines 18-25) which points out that unlimited new employee additions and individual flexibility are desired. As such, it would be natural to tweak Gilbert to include gratuity tracking for restaurant and bar employees. This would increase the number of employees saving for their retirement.

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20. Applicant has argued that Gilbert does not teach the first limitations at the cited passage, however Applicant is reminded that claims may be given the broadest reasonable interpretation. See In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). To that extent, the examiner would point out that the cited passages of Gilbert disclose employee contributions and allocation percentages and amounts. The examiner interprets settlement amounts to include these ideas, that is, how much of earnings should be forwarded toward retirement, and in what investment vehicles. The Applicant appears to treat the term settlement amount to be the totaled purchase amount applied to a credit card user after including a gratuity. Even under this interpretation, the examiner would point out that a combination of the two references would teach the method and system as claimed. Gilbert teaches a system and method for considering contribution and allocation of income to 401K's, while Meyer discloses a system and method that is capable of tracking gratuities and the distribution thereof. The examiner is satisfied that a combination of references discloses Applicant's invention as claimed.

18. **With regard to Claims 2, 12**, Gilbert does not teach the system and method comprising:

multiple point of sale devices for receiving the sales, gratuity and investment preference information at respective business locations and generating a location specific investment database; and

a main processor for consolidating said location specific investment databases.

19. However, Meyer teaches point-of-sale devices that maintain gratuity information at (Col. 3, lines 50-65) and in detail at (Col. 7, line 37 - Col. 9 line 47). These passages

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describe recording individual gratuities that are then uploaded to a central server.

Consolidated information from specific devices is inherent to the system and method of Meyer. Again, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made, to combine the teachings of Gilbert, relating to a system and method for managing employee retirement plans, with the teachings of Meyer, relating to receiving gratuity information at POS device integrated into a network that maintains a totality of information. The motivation for such a combination is that in order to create unlimited new employee additions and individual flexibility as describe in Gilbert at (Col. 2, lines 18-25), it is necessary to maintain the information in a central database at a central location.

20. With regard to Claims 3, 13, Gilbert teaches the system and method comprising:

Receiving said investment database and generating a net investment amount to be credited to the accounts of said employees. (Col. 9, lines 3-5).

21. With regard to Claims 4,14, Gilbert teaches the system and method wherein:

a net investment amount equals a total of investment amounts for all of the employees less a fee for each investment transaction. (Col. 1, lines 33-50).

22. With regard to claims 5,15, Gilbert teaches the system and method comprising:

communicating said net investment amount to a financial institution associated by the employer for transferring the value of said net investment amount to one or more investment providers. (Col. 6, lines 45-47; Col. 8, lines 50-52).

23. With regard to claims 6,16, Gilbert teaches the system and method comprising:

transferring information to said one or more investment providers specifying how the money is allocated between the employees. (Col. 8, lines 11-15; Col. 9, lines 16-18).

24. With regard to Claims 7,17, Gilbert teaches the system and method comprising:

receiving money in the value of said net investment amount from said financial institution. (Col. 8, lines 56-60).

25. **With regard to Claims 8,18**, Gilbert teaches the system and method comprising:

transferring said money to one or more of the investment providers.
(Col. 8, lines 56-60).

26. **With regard to claims 9,19**, Gilbert teaches the system and method comprising:

transferring information to said one or more investment providers specifying how the money is allocated between the employees. (Col. 8, lines 11-15; Col. 9, lines 16-18).

27. **With regard to claims 10, 20**, Gilbert does not expressly teach the system and method comprising:

identifying each employee by an employer-independent account identifier, such that employees can change from one employer to another employer without changing the account identifier.

28. However, Gilbert does provide the mechanism for doing so, as described at (column 2, lines 18-26 and column 8, lines 26-32) which described using SSN's to track employees. Further, Henderson does teach that 401K's are portable and can be tracked from employer to employer. As such, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to combine the teachings of Gilbert, relating to a method for establishing and maintaining individual 401K retirement accounts, with the teachings of Henderson, relating to portability and transferring an account of an employee to a new employer. The motivation for such combination is found in Gilbert at (column 3, line 63 - column 4, line 2) which discusses the goal of tracking individualized employee retirement accounts, and continues with discussing a goal of simplifying the administration of 401K accounts.

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29. **With regard to claim 26**, the limitations in this claim comprise the exact same steps as in claim 1 and 10 with one exception, which is that the first limitation measures earned commissions. The Examiner respectfully takes an Official Notice that keeping a record of earned commissions by sales personnel is old and well known in the art. As such, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to combine the teachings of Gilbert to specifically include a systems which measures earned commissions by sales personnel. The motivation for such a combination is described in Gilbert at (column 2, lines 18-25) which points out that unlimited new employee additions and individual flexibility are desired. It would be natural to tweak Gilbert to include employees working for sales commissions. This would increase the number of employees saving for their retirement.

30. Applicant has not traversed the Examiner's use of Official Notice from the previous Office Action. MPEP § 2144.03(C) states, in respect to an Examiner's use of Official Notice:

To adequately traverse such a finding, an Applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.11 I(b).

The same section continues:

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

31. The Examiner is obligated to consider as admitted prior art, the elements of claim

26.

Conclusion

32. Claims 1-20 and 26 are rejected.

33. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

34. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7364. The examiner can normally be reached on M-F, 9-4 PM.

36. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James A. Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

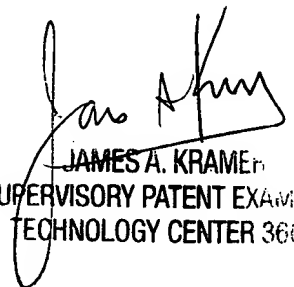
37. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HT

 4/19/07
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